

IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

FRANCISCO GUADALUPE RIVERA

Debtor

FRANCISCO GUADALUPE RIVERA

Plaintiff

MIGUEL A. VERDIALES, ESQ., ASUME  
ADMINISTRATOR; et als.

Defendants

CASE NO. 99-11078 ESL

CHAPTER 13

ADVERSARY NO. 99-0131

**FILED & ENTERED**

**OCT 06 2000**

CLERK  
U.S. BANKRUPTCY COURT  
SAN JUAN, PUERTO RICO

OPINION AND ORDER

Debtor filed the instant adversary proceeding on December 16, 1999 seeking an injunction against ASUME to cease collection of past due child support payments obtained through a wage garnishment order issued by the Superior Court of Puerto Rico, Caguas Part. The order directs debtor's employer to deduct the amount of \$600.00 per month, \$50.00 to cover arrears and \$550.00 for current payments. At the pretrial held on April 26, 2000 the Court entered default against all defendants as the complaint had not been answered and stated that an opinion would follow.

Plaintiff filed certificates of service of summons and complaint for all defendants except for the Honorable Rita L. Pruetzel. All defendants are sued in their official capacity and damages are not requested. The request is one for injunctive

cc: Debtor, R. Lopez, R. Figueroa, A. Cancio Martinez, J/UP,  
main case

10/26/00  
7 11

relief to cease the deductions and to reimburse the deductions  
1 made after the filing of the petition.

2 The record of the adversary proceeding and the bankruptcy  
3 case show that the relevant facts to the controversy are  
4 uncontested. Thus, the issue hinges on the applicable law. That  
5 is, whether a wage garnishment order by the Superior Court of  
6 Puerto Rico for past due child support payments entered after the  
7 filing of a petition under Chapter 13 of the Bankruptcy Code  
8 should be set aside and the wage garnishment ordered thereat  
9 enjoined. For the reasons that follow, the Court finds that the  
10 order should be deemed null and void and ASUME must be enjoined  
11 from making any further deductions from debtor's salary.

#### 12 Facts

13 On August 18, 1999 the debtor filed a petition under Chapter  
14 13 of the Bankruptcy Code. Debtor scheduled ASUME as an unsecured  
15 priority creditor for the amount of \$1,000.00. ASUME was also  
16 included in the master address list and was given notice of the  
17 filing of the petition, as well as the scheduling of the 341  
18 meeting of creditors and the hearing on confirmation. On October  
19 8, 1999 ASUME issued a certification stating that debtor was in  
20 arrears on the child support payments in the amount of \$5,140.00.  
21 Debtor amended the schedules to conform the listed amount of  
22 ASUME's debt to the certified amount. Because ASUME, nor the  
23 beneficiary of the support payments filed a claim, the debtor  
24 filed a claim on behalf of ASUME for \$5,140.00.

25 On November 9, 1999 the Court entered an order confirming  
26 debtor's Chapter 13 Plan. The plan provides for direct current

1 payments to ASUME. The Chapter 13 plan payment schedule is 60  
2 monthly payments of \$150.00, for a base of \$9,000.00. There were  
3 no objections to the confirmation, no creditor appeared at the  
4 hearing on confirmation, and the Chapter 13 trustee had  
5 recommended confirmation since the 341 meeting held on September  
6 22, 1999.

7 Schedule I, CURRENT INCOME OF INDIVIDUAL DEBTOR, discloses  
8 that debtor is employed as an Assistant Manager at "Gancho NV"  
9 with a gross monthly income of \$892.66 and a net monthly income  
10 of \$758.77. Debtor claims as dependents a 7 year old daughter  
11 and a 4 year old son. Schedule J, CURRENT EXPENDITURES OF  
12 INDIVIDUAL DEBTOR, shows total projected monthly expenses of  
13 \$608.77, and a monthly disposable income of \$150.00. All of  
14 which will be used to fund the sixty month plan. The projected  
15 expenses are ridiculously low. For example, debtor does not  
16 project any expenses for the following items: rent or home  
17 mortgage payment, utilities, insurance, taxes, and automobile  
18 expenses. Also, the monthly food expense is projected at only  
19 \$50.00. This apparent underestimation of expenses and  
20 overestimation of disposable income is taken as a show of good  
21 faith in proposing the Chapter 13 Plan. Specially, in light of  
22 the fact that, after debtor filed a priority claim for ASUME for  
23 the certified arrears, substantially all disbursement will go to  
24 ASUME.

#### Conclusions of Law

25 The Bankruptcy Reform Act of 1994 clearly intended to  
26 protect recipients of alimony and support payments based on

previously obtained awards. Some examples are the priority afforded by 11 USC 507[a][7] and the exceptions to the dischargeability of debts under 11 USC 523[a][5,15]. Macy v. Macy, 114 F.3d 1 (1<sup>st</sup> Cir. 1997). Notwithstanding, the interaction of family and bankruptcy law frequently results in a clash on account of their different goals. Judith K. Fitzgerald and Ramona M. Arena, Bankruptcy and Divorce, Wiley Law Publications, Second Edition, § 1.1. This Court is conscious of the principle that while the bankruptcy courts have jurisdiction over property of the estate, state law determines what is property of the estate. Thus, it gives deference to determinations by the courts of the Commonwealth of Puerto Rico in this area. However, the issue before the Court is one of federal bankruptcy law. See Ankenbrandt v. Richards, 504 U.S. 689, 112 S.Ct. 2206 (1992).

Pursuant to 11 USC 541 [a] and 11 USC 1306, property of the estate of a Chapter 13 debtor includes post-petition earnings. Upon confirmation of the Chapter 13 plan, the debtor remains in possession of all property of the estate, unless the confirmation order specifies otherwise. 11 USC 1306 [b]. In this case the order confirming plan does not provide for such exception. Thus, all earnings are property of the estate.

The commencement of a bankruptcy case automatically triggers an "Automatic Stay" of all actions against property of the estate. 11 USC 362 [a]. In re Nelson, 994 F.2d 42 (1<sup>st</sup> Cir 1993). The Bankruptcy Reform Act of 1994 provided exceptions to the automatic stay provisions for the commencement or continuation for the establishment of paternity, or the

establishment or modification of an order for alimony,  
1 maintenance or support; and of the collection of alimony,  
2 maintenance, or support from property that is not property of the  
3 estate. 11 USC 362 [b][2]. The order by the Superior Court of  
4 Puerto Rico garnishing debtor's wages was one directly against  
5 property of the estate and in violation of the automatic stay  
6 provisions of section 362[a] of the Bankruptcy Code. The  
7 uncontested facts do not show that the action comes within the  
8 exceptions in section 362[b][2]. Therefore, the order is null  
9 and void. In re Soares, 107 F. 3d 969,976 (1<sup>st</sup> Cir 1997).

#### 10 Conclusion

11 In view of the foregoing, the wage garnishment order entered  
12 by the Superior Court of Puerto Rico , Caguas Part, after the  
13 filing of the petition and against property of the estate is  
14 declared null and void. Consequently, all monies garnished by  
15 ASUME after the filing of the petition shall be turned over to  
16 the debtor, who, in turn will cure any and all arrears with the  
17 Chapter 13 Trustee within ten days of receipt of the same.

18 **SO ORDERED.**

19 **San Juan, Puerto Rico, this 5<sup>th</sup> day of October, 2000.**

20  
21   
22 \_\_\_\_\_  
23 **ENRIQUE S. LAMOUTTE**  
24 **U.S. Bankruptcy Judge**  
25  
26